



# MONTANA LEGISLATIVE BRANCH

## Legislative Fiscal Division

Room 110 Capitol Building \* P.O. Box 201711 \* Helena, MT 59620-1711 \* (406) 444-2986 \* FAX (406) 444-3036

Legislative Fiscal Analyst  
CLAYTON SCHENCK

DATE: September 30, 2005

TO: Legislative Finance Committee

FROM: Greg DeWitt

RE: Budget Amendment for SB 276 Tax Distributions

The Governor's Office of Budget and Program Planning has approved a budget amendment requested by the Department of Revenue to augment FY 2006 state special revenue funding. The budget amendment is for \$1,783,925 state special revenue to meet the distribution requirements of SB 276. SB 276 calls for distributions of the bentonite taxes to Carbon and Carter Counties. SB 276, as passed and approved, did not include an appropriation or amend state law to add a corresponding statutory appropriation for the distribution of tax proceeds.

According to Greg Petesch, the legality of the budget amendment is at issue because of the following concerns regarding the statutory requirements for the approving authority to approve the request:

- 1) Under 17-7-402(1)(c)(i), MCA, for approval authority in response to an emergency<sup>1</sup>
  - o No emergency exists to justify the expenditure since:
    - o No catastrophe, disaster, or calamity has occurred
    - o No serious unforeseen and unanticipated circumstance has occurred subsequent to the time that an agency's appropriation was made since SB 276 was passed and approved prior to passage and approval of HB 2. So, an appropriation could have been provided for the distribution and the need for a statutory appropriation was discussed during SB 276 deliberations but not included out of omission
- 2) Under 17-7-402(1)(e), MCA, for approval authority in response to an unanticipated event that has occurred since consideration by the legislature:
  - o No significant identifiable events, specific to Montana and pursuant to provisions or requirements of Montana state law have occurred since the matter was raised with or presented for consideration by the legislature, since SB 276 was passed and approved prior to passage and approval of HB 2. As such an appropriation could have been provided for the distribution and the need for a statutory appropriation was discussed during SB 276 deliberations but not included out of omission

Committee options for the budget amendment for SB 276 tax distributions include:

- 1) Take no action

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<sup>1</sup> An emergency is defined in 17-7-102(6), MCA.

- 2) Communicate to the executive that the committee has determined that the requirements for the approving authority to approve a budget amendment have not been satisfied and:
  - a) Include no further direction; or
  - b) Request that the Governor include an item to provide an appropriation to make distributions of bentonite taxes in a special legislative session call

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